

## SECTION 00.73.39

**MINORITY AND WOMEN BUSINESS ENTERPRISES  
SUPPLIER DIVERSITY PROGRAM - EXECUTIVE ORDER 524****1. PROJECT REQUIREMENTS**

General bidders must agree to contract with minority and women-owned businesses as certified by the Supplier Diversity Office (SDO) formerly known as SOMWBA. The amount of participation which shall be reserved for such enterprises shall not be less than the percentages stated in document 00.11.13 Advertisement found elsewhere in these contract documents.

**2. DEFINITIONS:**

For purposes of this Section 00.73.39 the following definitions shall apply:

- A. "Minority business enterprise" or "MBE", means a business enterprise that is owned and controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to, African Americans, Cape Verdeans, Western Hemisphere Hispanics, Asians, American Indians, Eskimos, and Aleuts. For purposes of section 61 and of section 40N of chapter 7, the term "minority owned business" shall have the same meaning as "minority business enterprise".
- B. "SDO" means the Supplier Diversity Office. ,
- C. "Minority Business Enterprise" (MBE) means a business organization which is owned and controlled fifty-one percent (51%) or more by one or more minority group members and certified as such by SDO.
- D. "Women Business Enterprise" (WBE) means a business organization which is owned and controlled fifty-one percent (51%) or more by one or more women and certified as such by SDO.
- E. "MBE/WBE Manufacturer" means a person or firm certified by SDO and engaged in the process of making, fabricating, constructing, forming or assembling a product(s) from raw, unfinished, semi-finished, or finished materials through a direct contract with a contractor, subcontractor, or supplier.
- F. "MBE/WBE Subcontractor" means a person or firm certified as such by SDO and contractually engaged by the contractor to perform a portion (a) of the contracted Work, including labor, materials and supplies, or (b) labor, materials and supplies, or any combination thereof.
- G. "MBE/WBE Supplier" means a person or firm certified as such by SDO and engaged in selling of materials and supplies to contractors, subcontractors, and/or manufacturers for the purpose of constructing, repairing, remodeling, adding to or subtracting from, or improving any building, structure or property through a direct contract with a contractor or subcontractor. Said MBE/WBE must sustain substantial financial risk in the process of performing/supplying the work for this contract. The Department may request information to determine where the MBE/WBE obtains supplies and materials.
- H "Amount of Participation" means the percentage stated on the advertisement of the final contract amount which is to be contracted to MBE/WBEs for work to be performed on this contract in accordance with this Section 00.73.39.

**3. JOINT VENTURES**

- A.** A Joint Venture shall mean a business arrangement between MBE/WBEs and a non-SDO certified General Contractor, in which the MBE or WBE has at least a twenty-five percent (25%) interest in the Contract, and in which the other has at least the required minimum percentage of participation in the Contract. It is expected that the M/WBE having the minimum 25% interest will participate in the management and decision making aspects of the project proportionate to its percentage of ownership and interest in the Contract.
- B.** An M/WBE Joint Venture shall mean a business arrangement wherein a SDO certified MBE or WBE serves as a General Contractor and engages the services of another SDO certified MBE or WBE (whichever is required) in an amount not less than twenty-five percent (25%) of the Contract amount, and in which the management and decision making aspects of the project are shared to the degree of participation and ownership in the Contract.

**3 CONDITIONS**

- A.** Once the Contractor agrees to comply with these provisions, and within 5 working days after receipt of bids, unless an extension of time or waiver for compliance is granted in accordance with Article 3 of the Instructions to Bidders, the apparent low bidder must submit a completed Participation Schedule and Letters of Intent covering each SDO certified MBE and WBE used to satisfy the requirements of this Section 00.73.39. These letters shall include the contract items the MBEs and/or WBEs are proposing to perform and the prices that the MBEs and/or WBEs propose to charge for the work.
- B.** MBE and WBEs listed on the Participation Schedule may be any combination of MBE/WBE Subcontractors, MBE/WBE Manufacturers, or MBE/WBE Suppliers as defined in Paragraph 2, G.
- C.** Letters of Intent are not required from filed sub-bidders who are SDO Certified MBEs or WBEs.
- D.** The amount of participation of MBE/WBEs listed in The Participation Schedule must total at least the percentage set forth in the Advertisement. The amounts indicated in the Letter of Intent shall not be less than the amount shown on the Participation Schedule. The SDO Certified MBEs and/or WBEs. for whom Letters of Intent are submitted must be identical to the ones listed on the Participation Schedule. No substitutions shall be made without the written approval of the Department.
- E.** Prior to the Validation of the Contract, the Contractor shall furnish the Owner and the Department with executed copies of all subcontracts with all of the MBEs and/or WBEs listed on the Participation Schedule.
- F.** Subcontractors are encouraged, but not required to subcontract portions of their work to MBEs and/or WBEs. Participation forms, available with the bidding documents shall be used to list those MBEs and/or WBEs with whom they wish to sub-subcontract and the dollar amount of those proposed sub-subcontracts.
- G.** The Contractor may include MBEs and/or WBEs utilized by non-certified subcontractors to satisfy the requirements of this article.
- H.** MBEs and WBEs listed on the Participation Schedule must be MBEs and WBEs at the time of the opening of bids.
- I.** MBE/WBE Certification from any other agency/municipality shall not be considered applicable for this Contract.
  - (1.)** The Department reserves the right to allow a MBE and/or WBE to perform work other than those categories listed on the MBE's or WBE's SDO certification.

- J. If a filed sub-bidder listed as a MBE and/or WBE is rejected for failure to obtain a performance and payment bond from a surety qualified to do business in the Commonwealth when requested by the general bidder to do so at the time of bid, said failure shall not entitle the general bidder to avoid the requirements of this Section 00.73.39
- K. The Contractor shall not change the MBEs and/or WBEs listed in the Participation Schedule or make any other such MBE/WBE substitutions after the Contract has been executed or during construction without the written approval of the Owner and the Department.
- L. The Contractor shall not terminate any subcontract for, nor perform with its own organization, work designated to a MBE or WBE on the Participation Schedule without the written approval of the Owner and the Department. Such approval shall be withheld until the Contractor demonstrates that the Amount of Participation is still met for any substituted MBE or WBE, provided however, that compliance with this paragraph shall not supersede the terms of M.G.L. c.149 §44F. Notice of all MBE/WBE status changes (before Final Completion) must be sent to the Department of Housing and Community Development - Legal Office/SDP, 100 Cambridge St. Suite 300, Boston, Massachusetts 02114.

#### **4 COMPLIANCE**

- A. The Contractor must provide information as is necessary, in the judgment of the Owner or the Department, to ascertain compliance with the terms of this Section 0073.39.
- B. The Contractor shall provide an executed Contractor's Affidavit of Payment to Minority Business Enterprises Form 00.73.39.05 as found in this Section. This form is also available on DHCD's web site at [www.mass.gov/dhcd](http://www.mass.gov/dhcd).
- C. If the Contractor desires to comply with this Section 00.73.39, but for reasons beyond its control cannot do so in accordance with the Participation Schedule, the Contractor must submit to the Owner and the Department the reason for its inability to comply and proposed revisions to the Participation Schedule stating how conditions of this Section 0073.39 are to be met.

#### **5. MBE/WBE REPORTING PROCEDURES**

- A. The Contractor shall provide, an executed Contractor's Affidavit of Payment to Minority Business Enterprises 00.73.39.05 on a copy of the form found at the end of this Section.
  - (1.) The Department or Owner may request copies of canceled checks to confirm compliance.
  - (2.) This affidavit shall be submitted by the Contractor as payments are made to MBE/WBEs for Work completed on this project.
  - (3.) Affidavits shall be sent to:  
SDP Coordinator  
Department of Housing and Community Development  
100 Cambridge Street – 3rd Floor  
Boston, MA 02114  
Attn: Contracts Specialist, Legal Department
  - (4.) Failure to submit by these reports shall result in sanctions described in Paragraph 6.

#### **6 SANCTIONS**

- A. If at anytime during the life of this Contract, the Contractor is found to be out of compliance with this Section 00.73.39, sanctions may be imposed within fifteen (15) working days after notification to the Contractor of said violation. If within those fifteen (15) days the Contractor remedies the non-compliance to the satisfaction of the Department, or provides compelling documentation as outlined in Paragraph 7.B said sanctions may be postponed or waived. If the Contractor requires more than fifteen (15) days to remedy non-compliance, it shall make a written request to the Department for a time extension. This request shall be made within the original fifteen (15) day period.

- B** If the Contractor fails to comply with the terms of these conditions, the Owner may impose the following sanctions:
- (.1)** require the Contractor to provide equivalent substitute participation with SDO Certified MBEs and/or WBEs acceptable to the Owner and Department and at no additional cost to the Owner; or
  - (.2)** suspend any payment for the Work that should have been but was not performed by a MBE and/or WBE pursuant to the Participation Schedule.
- C.** To the extent that the Contractor has not complied with the terms of these conditions, the Owner may withhold from any Certificate for Payment moneys equivalent to the product of the percentage of completion times the MBE and/or WBE dollar amount, minus the amount already paid to MBEs and/or WBEs for Work performed under the contract, minus any amounts withheld for previous non-compliance.

## **7 RECURSE**

- A.** The Owner and the Department have the option not to impose sanctions if the Contractor demonstrates, to the satisfaction of the Department, that the Contractor has taken every possible measure to comply with Section 00.73.39. This may constitute a reason for waiving this Section in whole or in part.
- B.** To demonstrate every possible measure, the Contractor shall furnish:
- (.1)** the name of each firm solicited for quotations on each Subcontract, the price quoted by each, and whether or not the firm solicited was a minority or woman-owned business;
  - (.2)** the reason for not subcontracting with a minority or woman-owned business enterprise when applicable;
  - (.3)** evidence showing efforts by the Contractor to supplement its own and SDO lists of minority and woman-owned business sources by contacting the Small Business Administration, trade organizations, the General Services Administration (U.S. Government), minority contractors' organizations, community organizations and other likely sources of names of additional minority or woman-owned business firms capable of performing the Work; and
  - (.4)** evidence showing other efforts to comply with this Section 00.73.39.

## **8 WAIVERS**

The Department has the discretion to determine that compliance with the participation goals is not feasible and may be reduced or waive these goals. To reduce or waive the MBE/WBE participation goals the apparent low general bidder must make this request in writing to the Department no later than five (5) working days after the general bid opening. *See Article 3.3 of the Instructions to Bidders.*

## **9 SEVERABILITY**

The provisions of this section are severable, and if any of these provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions of the Contract.

**End of 00.73.39**  
**MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES**  
**SUPPLIER DIVERSITY PROGRAM**

# SDO CERTIFIED MBE/WBE PARTICIPATION SCHEDULE

Commonwealth of Massachusetts  
Department of Housing and Community Development

- This form must be submitted by the apparent low general bidder within five working days of receipt of bids.
- Letters of Intent from all MBEs or WBEs listed must be submitted with this Participation Schedule.

State-Aided Project \_\_\_\_\_

LHA DEVELOPMENT NUMBER \_\_\_\_\_

The undersigned intends to subcontract with the following firms for the listed work and dollar amounts:

Name of Company	Description of Work	MBE or WBE	Supplier or Subcontractor	Value of Participation
1 _____	_____	_____	_____	\$ _____
2 _____	_____	_____	_____	\$ _____
3 _____	_____	_____	_____	\$ _____
4 _____	_____	_____	_____	\$ _____
5 _____	_____	_____	_____	\$ _____
6 _____	_____	_____	_____	\$ _____
7 _____	_____	_____	_____	\$ _____
8 _____	_____	_____	_____	\$ _____
<b>Dollar Value of MBE Commitment:</b>				\$ _____
<b>Dollar Value of WBE Commitment:</b>				\$ _____
<b>Total Dollar Value Commitment:</b>				\$ _____

**BIDDER CERTIFICATION**

The undersigned certifies under the penalties of perjury that (1) it intends to subcontract with the above listed firms for the identified work and dollar amounts unless a waiver or partial waiver has been granted by the Department and (2) certifies that he/she has read Section 00.73.39 conditions contained in the contract documents with regards to MBE/WBE participation and is authorized to bind the contractor to the commitment set forth above.

Date \_\_\_\_\_

\_\_\_\_\_  
Name of General Contractor

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State & Zip Code

**SDO CERTIFIED MBE/WBE**

**LETTER OF INTENT**

**Commonwealth of Massachusetts**

**Department of Housing and Community Development**

- This form is provided for SDOA Certified MBEs and WBEs being utilized as on this contract.
- This form must be completed by each SDO Certified MBE or WBE and submitted by the general bidder.
- General bidders or filed sub-bidders that are SDO Certified MBEs and WBEs may omit this form.

**TO: General Bidder**

**FROM SDO Certified MBE or WBE**

Name: \_\_\_\_\_  
 Street Address: \_\_\_\_\_  
 City/Town: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 Email: \_\_\_\_\_

Name: \_\_\_\_\_  
 Street Address: \_\_\_\_\_  
 City/Town: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 Email: \_\_\_\_\_

RE: State-Aided Project: \_\_\_\_\_  
 Name of Housing Authority and Project Number

1. My company intends to perform work in connection with the above project as:

☐ an individual ☐ **a corporation** ☐ **a partnership**

☐ a joint venture with \_\_\_\_\_

☐ other (explain) \_\_\_\_\_

2. My company is certified by SDO as a ☐ **MBE** ☐ **WBE in the following categories:**

**Warning:**  
**Misrepresenting your firms SDO**  
**certification may result in**  
**disqualification from this and other**  
**DHCD funded projects!!**

3. My company has not changed its ownership, control, or management in any ways that affect certification since obtaining SDO certification

4. My company understands that if your company is awarded the contract, your company intends to enter into an agreement to perform the work described below for the price indicated. My company also understands that your company will make substitutions only as allowed by Section 00.73.39 of the above project

5. My company intends **Brief Description of work** \_\_\_\_\_

This Work includes: ☐ Labor & Materials ☐ Labor Only ☐ Materials only

for a total amount of \_\_\_\_\_ Dollars \$ \_\_\_\_\_

Date \_\_\_\_\_ : \_\_\_\_\_  
 Authorized Signature of SCE

\_\_\_\_\_  
 Name and Title

**Please advise DHCD immediately if either party attempts to renegotiate this agreement**

## **SITE WORK**



**CONTRACTOR'S AFFIDAVIT OF PAYMENTS TO  
MINORITY BUSINESS ENTERPRISES (GC FORM)**

Date: \_\_\_\_\_

**TO:** Department of Housing & Community Development  
Candace Tempesta, SDP Coordinator  
100 Cambridge Street, Suite 300  
Boston, MA 02202  
Phone (617) 573-1507  
Fax: (617) 573-1285

**From:**

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

**RE:** Contract \_\_\_\_\_ Housing Authority \_\_\_\_\_ Project No \_\_\_\_\_  
Original Contract \_\_\_\_\_ Recording \_\_\_\_\_  
Amount \_\_\_\_\_ Period Ending \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS:**

The undersigned certifies that they have met the Minority Business Enterprise (MBE) and Women Owned Business Enterprises (WBE) requirements for the above named contract which states in part that the General Contractor:

1. Shall submit this form quarterly or at any time requested by DHCD, completing the information below;
2. Have subcontracted with the following M/WBEs in the dollar amounts enumerated in the Participation Schedule and Letters of Intent in effect at the time of contract execution.; and
3. Have made the following payments to each of the W/MBEs for work performed on this project.

MBE/WBE	Work Performed	Subcontract Amount	Total Payments to Date	Payments this Quarter
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

In WITNESS WHEREOF, the undersigned has signed and sealed this instrument under the pain and penalty of perjury.

This \_\_\_\_\_ Day of \_\_\_\_\_ 201 \_\_\_\_\_

\_\_\_\_\_  
Name of General Contractor

\_\_\_\_\_  
Signed and Sealed

On this \_\_\_\_ day of \_\_\_\_\_ 201\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, duly designated by the board of directors and proved to me, through satisfactory evidence of identification, which was \_\_\_\_\_, that s/he is the person whose name is signed on the foregoing documents, and acknowledged to me that s/he signed it voluntarily for its stated purpose and that it was her/his free act and deed.

\_\_\_\_\_  
Notary Public  
My Commission Expires: